

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

JAMES W. CAUGER,

Plaintiff,

v.

**TEXAS INSTRUMENTS INCORPORATED
and JOHN DOE,**

Defendants.

**CIVIL ACTION NO.
1:16-cv-10358-DPW**

**REPLY OF DEFENDANT TEXAS INSTRUMENTS INCORPORATED TO
ATTORNEY FIORE PORRECA'S MOTION TO WITHDRAW AS COUNSEL OF
RECORD WITHOUT SUBSTITUTION FOR THE PLAINTIFF (ECF 73)**

NOW COMES Defendant Texas Instruments Incorporated ("TI") and hereby submits this Reply to Attorney Fiore Porreca's Motion to Withdraw as Counsel of Record Without Substitution for the Plaintiff (ECF 73) (hereinafter, "Motion to Withdraw"). TI respectfully replies as follows:

1. On September 20, 2018, counsel for Plaintiff, Fiore Porreca (hereinafter, "Counsel") filed a Motion to Withdraw,¹ representing that Plaintiff James Cauger had consented to his counsel's withdrawal (ECF 73 at ¶2) and citing to grounds to withdraw without leave of Court under Local Rule 83.5.2(c)(1).
2. Counsel's Motion to Withdraw was filed approximately two (2) months before the deadline for "[f]act discovery, including depositions" (ECF 52) in the instant matter, as well as in the twenty-five (25) related cases filed in the United States District Court for Massachusetts.
3. The Motion to Withdraw was filed with no supporting documents, affidavits or acknowledgements confirming James Cauger did in fact consent to Counsel's withdrawal or substantiating Counsel's purported hardship in continued representation of his client.²
4. Counsel's reference within the Motion to Withdraw that Local Rule 83.5.2(c) allows withdrawal if there are no motions pending before the Court is misleading and incomplete. Specifically, TI has a Motion to Compel Discovery, filed on July 11, 2018 (ECF 57), pending.³

¹ Counsel filed a Motion to Withdraw as Counsel of Record Without Substitution in all twenty-six (26) related cases against Texas Instruments Incorporated.

² Without supporting documents or additional information, TI has no substantive basis to contradict Counsel's purported hardship noted within the Motion to Withdraw at this time.

³ TI's Motions to Compel filed on the same date in the other twenty-five related cases are also pending.

Counsel for Plaintiff filed a Response to TI's Motion to Compel on August 10, 2018. (ECF 61).⁴

5. On August 22, 2018, the Honorable Judge Douglas P. Woodlock referred TI's Motion to Compel to Magistrate Judge M. Page Kelley. (ECF 64). Since that time, the parties have participated in four (4) Motion hearings with Magistrate Kelley in an attempt to resolve the discovery issues that remain outstanding.⁵
6. Most recently, hearings were held on September 14, 2018 and September 17, 2018. *See* Transcripts of Telephone Conference attached hereto as **Exhibit 1** and **Exhibit 2**, respectively. During the September 14, 2018 hearing, Counsel represented to TI and Magistrate Kelley that Plaintiff James Cauger's third re-noticed deposition was moving forward on September 17, 2018,⁶ and that Counsel would make further efforts over the weekend to obtain Department of Labor records previously requested by TI. *See* **Exhibit 1** at 11:1-25.⁷
7. To date, no depositions have taken place and Counsel did not provide any additional Department of Labor records to TI.

Defendant Texas Instruments Incorporated respectfully requests that all outstanding motions be ruled upon prior to consideration of Counsel's Motion to Withdraw (ECF 73).

⁴ TI's Motions to Dismiss filed on September 5, 2018, are also pending in four (4) related cases: *Estate of Michael P. Dilorio*, 1:16-cv-12353 (ECF 43); *Estate of Blanche Leary*, 1:16-cv-12368 (ECF 43); *Estate of Irene Moitoza*, 1:16-cv-12366 (ECF 42); and, *Estate of Edward L. Schulze*, 1:16-cv-12364 (ECF 43). None of these motions were opposed by Counsel on or before the deadline of September 19, 2018.

⁵ The parties appeared by telephone for Motion hearings before Magistrate Kelley on August 28, 2018 (ECF 66), September 4, 2018 (ECF 67), September 14, 2018 (ECF 69) and September 17, 2018 (ECF 71).

⁶ On September 7, 2018, TI served deposition notices for a third time for the seven (7) living Plaintiffs' depositions, including Plaintiff James Cauger, *to take place on dates provided by Counsel*.

⁷ On September 17, 2018, Counsel stated that he had considered Magistrate Kelley's opinion and that he intended on contacting plaintiffs' firms to obtain assistance with the cases and was requesting "somewhere between a two week to 30-day continuance or stay of proceeding until [he's] able to bring on some help[.]" **Exhibit 2** at 3:16-4:1.

Respectfully submitted,
TEXAS INSTRUMENTS INCORPORATED,
By its attorneys,

/s/ Mark O. Denehy

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CERTIFICATE OF SERVICE

I, Mark O. Denehy, hereby certify that this document filed through the ECF system will be served electronically to the registered participants as identified on the Notice of Electronic Filing [NEF] and paper copies will be served via First-Class U.S. Mail to those indicated as non-registered participants on September 28, 2018.

Dated: September 28, 2018 /s/ Mark O. Denehy
Mark O. Denehy